IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
Review Petition No.168 of 2006
In
Writ Petition No.6315 of 2005

Shri Atique Mohammad Khan. .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

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Shri A.V.Anturkar with S.B.Deshmukh for the Petitioner.

S/Shri A.A.Kumbhakoni, Associate Advocate General with R.M.Patne, AGP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
S.R.SATHE, JJ

DATED : 21ST FEBRUARY, 2007

**P.C.**

1. Heard. The judgment and order dated 16th June, 2006 in Writ Petition No.6315 of 2005 is sought to be reviewed on the ground that though the order of termination was set aside by the said judgment, no consequential reliefs in the nature of direction for continuation of service with all consequential benefits including the benefit of payment of backwages were granted. It cannot be disputed that by the Judgment dated 16th June, 2006, the ultimate order,

which was passed, reads thus:-

> "In the result, therefore, the order of termination of services of the petitioner dated 29th July, 1994 issued against the petitioner cannot be sustained and is liable to be quashed and set aside, and accordingly the same is hereby quashed and set aside. The rule is made absolute in terms of the prayer clause 16(c) of the petition. No order as to costs."

2. The applicant/petitioner in his petition while making grievance about the illegal termination of his services had prayed the following reliefs:-

> "(a) the Honourable Court be pleased to issue Rule in this matter;
>
> (b) the Honourable Court be pleased to issue writ of quo-warranto, calling upon the respondents to explain under what authority they have issued the impugned notice of termination dated 29th July 1994;

(c) the Honourable Court be pleased to issue Writ of Mandamus/Writ of Certiorari or any other appropriate writ, direction and order quashing/setting aside the notice of termination dated 29th July 1994 issued by respondent no.1;

(d) pending hearing and final disposal of the present petition, the Hon'ble Court be pleased to restrain the respondents from executing/giving effect to the notice of termination dated 29th July 1994 issued by respondent no.1;

(e) the petitioner be awarded the costs of the present petition;

(f) other just and equitable orders be passed in the interest of justice."

3. Apparently, therefore, there was no prayer for continuation of service with all consequential benefits including the benefit of payment of backwages. Hence, merely because there is no specific

direction for continuation of the services with consequential benefits to the applicant including the benefit of payment of backwages, in the absence of specific prayers in that regard, it would not amount to an error apparent on the face of record. Had there been a specific prayer in that regard, and yet while setting aside the order of termination the issue in relation to grant of continuation of services with all consequential benefits including the benefit of payment of backwages was not considered, perhaps obviously it could have been an error apparent on the face of record and not otherwise.

4. In case of backwages, it is settled law that unless the employee specifically claims for the same and proves that from the date of termination till the date of reinstatement he was not gainfully employed elsewhere, the question of grant of backwages does not arise. The law on the point is well settled by the decisions of the Apex Court in **U.P.State Brassware Corpn. Ltd. & Anr. v. Udai Narain Pandey,** reported in 2005 AIR SCW 6314 and **U.P.State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey,** reported in (2006)1 SCC 479.

5. The decision of the Apex Court in **Manorma**

**Verma (Smt.) v. State of Bihar & Ors.,** reported in 1994 Supp(3) SCC 671 is sought to be relied upon on behalf of the applicant. Obviously it was delivered in the facts of the case wherein it was not in dispute that the claimant was not gainfully employed elsewhere during the relevant period. In those set of facts, it was observed that consequential order for grant of back wages was obviously required to be followed. Being so, the said decision does not help the applicant to justify review of the order dated 16th June, 2006. As no other grounds are disclosed for review of the said order, the petition for review is dismissed.

(R.M.S.KHANDEPARKAR, J)

( S.R.SATHE, J)